

## Case Tables

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## Kenneth

### Duties to the Court

<b>Case</b>	<b>Facts</b>	<b>Rule</b>
<i>Chua v ANZ</i> [1997] (HC) Hammond J	<ul style="list-style-type: none"><li>- Ex parte injunction to hold an ANZ mortgagee sale.</li><li>- Chua's solicitors told Court the settlement was later, had actually taken place previous day. Counsel knew this.</li></ul>	<ul style="list-style-type: none"><li>- Absolute duty for all lawyers to disclose all relevant information, for and against the client, in an ex parte proceeding.</li><li>- Injunction removed, Mr Chou's lawyers are jointly responsible for all costs.</li><li>- Violation of rule 13.1.</li></ul>
<i>Gazley v WDLS</i> [1975] (HC) White J	<ul style="list-style-type: none"><li>- Document accidentally left out of a CA judgement handed to Counsel.</li><li>- Gazley sued the CA bench claiming failure to discharge duty.</li></ul>	<ul style="list-style-type: none"><li>- Attacked reputation of CA and honesty/integrity of judges without just cause.</li><li>- Baseless allegations constitute misleading the Court.</li><li>- Misconduct. Mr Gazley fined and censured.</li><li>- Violations of rules 10, 11, 12, 13.8, and 13.8.1.</li></ul>
<i>R v Taffs</i> [1990] (CA) Cooke P	<ul style="list-style-type: none"><li>- Taff's client involved in alleged mugging.</li><li>- Taff called the complainant's mother saying he would crucify her son on the stand as a liar and homosexual if he gave evidence.</li></ul>	<ul style="list-style-type: none"><li>- Perverting the course of justice.</li><li>- Issues of fact are determined by the Court and contended by the defence, but the defence cannot try to prevent issues of fact being introduced.</li><li>- Violation of rules 2.1, 13.8.</li></ul>
<i>Vernon v Bosley</i> [1997] (UKCA) Stuart-Smith LJ	<ul style="list-style-type: none"><li>- Nanny negligently killed two daughters by driving a car into a river.</li><li>- Father (Vernon) sued for nervous shock and won.</li><li>- Evidence introduced in different proceeding saying Vernon had substantially recovered from his shock.</li></ul>	<ul style="list-style-type: none"><li>- Evidence was permitted to be admitted.</li><li>- Breach of duty, information was not privileged and should have been disclosed.</li><li>- Evidence has to be disclosed, otherwise misleading the Court.</li><li>- Duty to disclose continues right up to the point where the judgement is delivered.</li><li><u>Dissent (Evans LJ)</u>: Duty to disclose ends at the close of evidence. No dishonesty, situation had simply changed. There must be an end to litigation at some point.</li></ul>

### Fit and Proper Person

Duncan Webb: The Duty of Respect and Courtesy	<ul style="list-style-type: none"> <li>- Applies to all with whom the lawyer comes into contact.</li> <li>- Uphold the honour, standards, and reputation of the profession.</li> </ul>	<ul style="list-style-type: none"> <li>- Test: What objective measure of strength was needed in the communication? Would the conduct be considered by other lawyers or the general public as being acceptable?</li> </ul>
<i>Auckland Standards Committee v Johnston</i> [2013] (NZLCDT)	<ul style="list-style-type: none"> <li>- Johnston had abused advances paid to a trust.</li> <li>- Accepted charge of disgraceful and dishonourable conduct.</li> </ul>	<ul style="list-style-type: none"> <li>- Least punitive sentence appropriate should be imposed.</li> <li>- Purpose of the tribunal is public protection, not punishment.</li> <li>- Repeated evidence of failure to understand the standards required of a lawyer.</li> <li>- Clients should be able to trust their lawyers to the ends of the Earth (<i>Hart</i>).</li> <li>- Clients could not trust Johnston, struck off.</li> </ul>
<i>L v Canterbury District Law Society</i> [1998] (HC)	<ul style="list-style-type: none"> <li>- L guilty of 92 charges, all related generally to the lending of money.</li> <li>- Offences of fraud, deceit, general misconduct.</li> <li>- Was only allowed to practice under supervision, applied for readmission but was dishonest.</li> </ul>	<ul style="list-style-type: none"> <li>- Appeal refused.</li> <li>- L unable to demonstrate the dishonest elements of his personality no longer existed.</li> <li>- Onus is on the applicant to show they've changed.</li> </ul>
<i>Y v M</i>	<ul style="list-style-type: none"> <li>- Family Court proceeding, mother submitted accusations of sexual abuse by the father.</li> <li>- Father argued the solicitor breached his duty in not affirming the truth of the matter.</li> </ul>	<ul style="list-style-type: none"> <li>- No dereliction of duty. Only mere negligence, not gross negligence.</li> <li>- Lawyers should take decent steps to satisfy themselves something is accurate, but if they believe it's accurate on the BOP they can submit it.</li> </ul>
<i>National Standards Committee v Poananga</i> [2012] (NZLCDT)	<ul style="list-style-type: none"> <li>- Ms Poananga working in Gisborne for chambers based in Auckland.</li> <li>- Dealt with 350 claims with strict deadlines virtually alone.</li> <li>- Misrepresented instructions, forged signatures, was party to misleading statutory declarations.</li> <li>- Attempted to skew psychometric tests.</li> </ul>	<ul style="list-style-type: none"> <li>- Skewing the tests is further evidence of her dishonesty.</li> <li>- She should have admitted responsibility and plead mitigating factors at sentencing.</li> <li>- Clients have no power to legitimise breach of the rules.</li> <li>- Cultural factors were not seen as a mitigating factor.</li> <li>- Due to complete lack of honesty she was struck off.</li> </ul>
<i>Pou v WBOPDLS</i> [2005] (HC)	<ul style="list-style-type: none"> <li>- Pou misused university funds to access porn online.</li> <li>- Did not admit these convictions when applying to the bar.</li> <li>- Claimed he both forgot and didn't think it was relevant.</li> </ul>	<ul style="list-style-type: none"> <li>- Onus on Pou to show his character changed since the dishonest conduct.</li> <li>- Significant affidavit evidence of Pou's good character.</li> <li>- Finding of fact that this was not an attempt to deceive the law society, it was an honest mistake.</li> <li>- Certificate of good character issued.</li> </ul>
<i>Re Owen</i> [2004] (HC)	<ul style="list-style-type: none"> <li>- Mr Owen had a troubled upbringing, had been convicted of offences as old at 29.</li> <li>- Had sound character references.</li> </ul>	<ul style="list-style-type: none"> <li>- High Court determined he showed he had turned his life around.</li> <li>- Test is whether a reasonable member of the public, with knowledge of the specific facts, would conclude that Mr Owen was of such integrity, probity, and trustworthiness that he could be admitted.</li> <li>- Found he turned his life around and was fit to be admitted.</li> </ul>

<i>Re Potter</i> [2006] (HC) Cooper J	<ul style="list-style-type: none"> <li>- Mr Potter had a long history of over 50 offences.</li> <li>- Had not been convicted since 1987 aged 21.</li> </ul>	<ul style="list-style-type: none"> <li>- Offending was of historical relevance only.</li> <li>- Applied <i>Re Owen</i>. Potter had turned his life around and demonstrate the character flaws present at the time of the offending no longer existed.</li> <li>- Certificate of good character granted.</li> </ul>
<i>Singh v ADLS</i> [2002] (HC) Harrison J	<ul style="list-style-type: none"> <li>- Mr Singh was an Indian lawyer who sought admission in NZ.</li> <li>- Had been acting as an advocate for refugees.</li> <li>- Very low success rate, fabricated evidence, had daughter conduct cases, didn't inform paying clients of these facts.</li> </ul>	<ul style="list-style-type: none"> <li>- Difference between good character and fitness to practice.</li> <li>- Lied about fabricating evidence, didn't pay tax etc.</li> <li>- Evidence showed he was an incompetent lawyer.</li> <li>- Application denied.</li> </ul>
<i>WDLS v Cummins</i> [1998] (HC)	<ul style="list-style-type: none"> <li>- Cummins was suspended for 3 years for fraud and misappropriation of money.</li> <li>- WDLS appeals, arguing he should be struck off.</li> </ul>	<ul style="list-style-type: none"> <li>- Investigation is an objective inquiry.</li> <li>- Clients have to be able to trust lawyers to the ends of the Earth.</li> <li>- Evidence that Cummins is not of fit and proper character to practice law.</li> <li>- Struck off.</li> </ul>
<i>Orlov v NZ Lawyers and Conveyancers Disciplinary Tribunal</i> [2014] (HC)	<ul style="list-style-type: none"> <li>- Mr Orlov had a history of clashes with Harrison J.</li> <li>- Accused him of personal attacks, discrimination, dislike, and prejudice.</li> </ul>	<ul style="list-style-type: none"> <li>- Orlov had the right to criticise a judge and his decisions but had to maintain the honour of the profession at all times.</li> <li>- By accusing Harrison J of such prejudice that he decides cases differently, he went too far.</li> <li>- The remarks were disgraceful and dishonourable.</li> <li>- Found guilty of misconduct. Not struck off as his comments were not made dishonestly.</li> </ul>
<i>NZLS v Deliu</i> [2014] (HC) Asher J	<ul style="list-style-type: none"> <li>- NZLS brought a motion to strike Deliu from the roll directly to the HC without going through the LS processes.</li> </ul>	<ul style="list-style-type: none"> <li>- HC has inherent jurisdiction to hear any case regarding any lawyer.</li> <li>- However, Law Society/Disciplinary Tribunal is the best place to deal with these issues.</li> <li>- Case dismissed.</li> </ul>

## Barristers' Duties

All rules of conduct and client care apply to barristers and solicitors.

Chapter 14 of the rules specifically apply to barristers.

<p><i>R v Kiliva</i> [2008] (CA) Priestly J</p>	<ul style="list-style-type: none"> <li>- Sexual assault case.</li> <li>- The defendants called no evidence and were convicted.</li> <li>- Appealed arguing their counsel called no evidence and did not call the defendants despite being instructed to.</li> </ul>	<ul style="list-style-type: none"> <li>- Court considered the defendants' affidavits had been drafted specifically for the appeal.</li> <li>- The trial was conducted in an unexceptional manner.</li> <li>- Written evidence showing the defendants understood and accepted they were not going to give evidence.</li> <li>- Appeal of little merit, dismissed.</li> </ul>
<p><i>R v McLoughlin</i> [1984] (CA) Hardie Boys J</p>	<ul style="list-style-type: none"> <li>- Defendant convicted of rape.</li> <li>- Barrister instructed to call two alibi witnesses, declined to follow instructions and called no evidence.</li> </ul>	<ul style="list-style-type: none"> <li>- Counsel has no right to disregard instructions, regardless of their opinion on the merit of those instructions.</li> <li>- If a barrister is unable to follow instructions he should inform his client that unless they are changed he will be unable to act further. If they insist, he should inform the judge and seek leave to withdraw.</li> <li>- Rule 13.3: Must follow client's instructions. Retrial ordered.</li> </ul>
<p><i>WBOPDLS v Baledrokadroke</i> [2001] (NZLPDT)</p>	<ul style="list-style-type: none"> <li>- Mr B received money and used it for private purposes, acted without a practicing certificate, and was convicted of numerous alcohol and driving offences.</li> </ul>	<ul style="list-style-type: none"> <li>- To strike someone off, the conduct must be 'reprehensible, inexcusable, disgraceful, deplorable, or dishonourable.'</li> <li>- Practising without a certificate is deplorable and reprehensible.</li> <li>- The barrister committed a number of offences in quick succession, suggesting he did not understand the requirements.</li> <li>- Mr B was struck off.</li> </ul>
<p>Litigation Ethics</p>	<ul style="list-style-type: none"> <li>- If you suspect a document is forged, can only submit it if satisfied on BOP that it's genuine.</li> <li>- Otherwise should file a complete admission of claim to avoid your client going to jail.</li> </ul>	

## Conflicts of Interest

<p><i>Armitage v Paynter Construction</i> [1998] (CA) Thomas J</p>	<ul style="list-style-type: none"> <li>- Joint-venture between Leisuretime and Paynter Construction.</li> <li>- Walker was solicitor for Leisuretime, director and shareholder.</li> <li>- Paynter granted Walker power of attorney.</li> <li>- Leisuretime cash-strapped, Walker directed payments solely to Leisuretime.</li> </ul>	<ul style="list-style-type: none"> <li>- Walker owed a duty of loyalty and good faith to both parties.</li> <li>- As soon as Walker knew Leisuretime was in financial difficulty he could not continue to act for both parties.</li> <li>- Can't act for one party to the prejudice of the other.</li> <li>- Held partially responsible, had to pay some damages.</li> </ul>
<p><i>Solicitor General v Miss Alice</i></p>		<ul style="list-style-type: none"> <li>- If you receive a document within the course of litigation, it is for that purpose only.</li> </ul>
<p><i>Daniels v Complaints Committee 2 of the WDLs</i> [2011] (HC)</p>	<ul style="list-style-type: none"> <li>- Daniels had sex with a client he was representing in a family matters.</li> <li>- Client was vulnerable and impoverished.</li> </ul>	<ul style="list-style-type: none"> <li>- General deterrence factors mandated the imposition of a serious suspension.</li> <li>- Award of the tribunal (3 year suspension, no name suppression, compensation and costs of \$40k) not manifestly excessive.</li> <li>- Balancing test of name suppression is between the public interest of open justice and confidence in the profession balanced against potential harm to practitioner and family.</li> <li>- Tribunal did not err.</li> </ul>
<p><i>Rawleigh v Tait</i> [2008] (CA) Baragwanath J</p>	<ul style="list-style-type: none"> <li>- Mrs Rawleigh had been running a family company with her husband.</li> <li>- Domestic disputes throughout the marriage, broke down.</li> <li>- Mr Tait advised Mr Rawleigh on a number of matters.</li> <li>- Mrs R signed personal guarantee against the advice of T.</li> </ul>	<ul style="list-style-type: none"> <li>- Mr R exercised undue influence over Mr T to the detriment of Mrs R.</li> <li>- Solicitors are under no duty to ensure that consent is being given of their own free will, only have to be reasonably satisfied.</li> <li>- Mrs R would have signed the guarantee anyway.</li> <li>- T breached a fiduciary duty in not disclosing he was working for Mr R, but it did not cause the loss.</li> </ul>
<p><i>Russell McVeagh v Tower</i> [1998] (CA)</p>	<ul style="list-style-type: none"> <li>- Wellington RMac office worked for Tower. After tax work was complete, Auckland office worked for GPG in a hostile takeover.</li> </ul>	<p><u>Majority</u></p> <ul style="list-style-type: none"> <li>- No conflict in the kind of work.</li> <li>- Clients have a right to choose what counsel they would like to work for them.</li> <li>- Three stage test;             <ol style="list-style-type: none"> <li>1. Is confidential information being held which, if disclosed, was likely to affect the interests of a client or former client?</li> <li>2. Is there a real or appreciable risk that the information would be disclosed?</li> <li>3. Recognising the significance and importance of the fiduciary relationship, whether a duty of discretion arose for which the Court's power should be exercised.</li> </ol> </li> <li>- Knowledge of Tower's tax matters, how it structured its management etc insufficient to warrant disqualification.</li> <li>- Chinese wall reduced the risk of confidential information being communicated.</li> </ul>

		<ul style="list-style-type: none"> <li>- NZ is small and the Court should not unduly restrict access to expert advice. <u>Dissent (Thomas J)</u></li> <li>- RMac was under a duty to disclose all material information to Tower, it failed to do so.</li> <li>- Solicitors bear a duty to show the confidential information would not be disclosed.</li> <li>- Chinese Wall is insufficient, risks are too high.</li> <li>- Lawyers owe a duty of absolutely loyalty and fidelity to their client. It demands full open disclosure to the client.</li> <li>- The information RMac had was valuable, they shouldn't have been allowed to act.</li> <li>- Outlandish decision.</li> </ul>
<i>Taylor v Schofield Peterson</i> [1999] (HC)	<ul style="list-style-type: none"> <li>- Mrs Earl solicitor at SP.</li> <li>- Taylor and business partner formulated a plan for T to sell his half of the business to partner as a loan, with partner paying interests on the loan.</li> <li>- Earl drafted and witnessed the agreement.</li> <li>- Partner became bankrupt, couldn't pay.</li> </ul>	<ul style="list-style-type: none"> <li>- Solicitor must do 5 things when there is a conflict;</li> <li>1. Recognised a conflict of interest or a real possibility of one.</li> <li>2. Fully explains the conflict to the parties.</li> <li>3. Further explain the potential ramifications of the conflict.</li> <li>4. Ensure the client has a proper appreciation of the conflict and its implications.</li> <li>5. Obtain the client's informed consent.</li> <li>- Follows <i>Clark Boyce v Mouat</i>.</li> <li>- Earl was in clear conflict. If she had fully informed Taylor, he would have sought security for the loan and done more to secure his position.</li> <li>- Earl caused the loss. Long chain of causation warranted 20% discount in damages.</li> </ul>
<i>Wells v WDS</i> [1996] (CA)	<ul style="list-style-type: none"> <li>- Gazley acted for Mrs Wells in a matrimonial property dispute.</li> <li>- Mrs W fired him, he then began acted for Mr W.</li> </ul>	<ul style="list-style-type: none"> <li>- Cab rank rule does not exist in isolation. It is subject to more specific rules.</li> <li>- Where there is a conflict you must decline to act.</li> <li>- Law Society is entitled to intervene by requiring lawyers to abide with professional standards.</li> <li>- Mr G was disqualified.</li> </ul>
<i>Mike Pero Mortgages Ltd v Mike Pero</i> [2014] (HC)	<ul style="list-style-type: none"> <li>- Buddle Findlay acted for Mike Pero and his companies.</li> <li>- Marketing/person sued by Mortgages.</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Black v Taylor</i> held justice must be seen to be done.</li> <li>- A principle is owed a single minded duty of faith by the fiduciary.</li> <li>- Irrefutable bright line test.</li> <li>- <i>Russell McVeagh</i> only applies to commercial transactions, not litigation.</li> <li>- The reasonably informed fair minded observer would conclude BF knew significant details about MP's methods of operating and personality, meaning that they should not act.</li> <li>- Disqualified.</li> </ul>
<i>The Saxmere Saga</i> [2007] (SC)	<ul style="list-style-type: none"> <li>- Wilson J and Galbraith QC close personal friends and business partners.</li> </ul>	<ul style="list-style-type: none"> <li>- Test: Would the fair-minded lay observer reasonably apprehend that there was a real and not remote possibility that the judge might not be impartial (<i>Ebner</i>).</li> <li>- The FMLO has a reasonable level of knowledge about the profession.</li> </ul>

	<ul style="list-style-type: none"><li>- Wilson J called Cooke to generally inform him of the nature of the relationship.</li><li>- Later discovered that Wilson J was in debt to Cooke to around \$72k.</li></ul>	<ul style="list-style-type: none"><li>- Not unusual for judges to be close friends with barristers, the top echelon of the NZ legal profession is small and tight knit.</li><li>- Friendship and shared business interests is not enough to suggest Wilson J would be beholden to Galbraith.</li><li>- However the existence of a debt means that Wilson J likely was beholden to Galbraith. He would fail the test, as it may have had an unconscious influence on his decision making.</li><li>- Wilson J should not have sat, had a conflict of interest.</li></ul>
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**Legal Professional Privilege**

- The privilege belongs to the client and binds the lawyer.
- Exists to ensure free and frank discussion between lawyer and client.
- Privilege continues in perpetuity, it also continues after death.
- Only the client can waive privilege.
- It is not a breach of privilege to seek advice in house.
- Covered in rules 8, 13, and 6.

<i>B v ADLS</i> [2004] (PC)	<ul style="list-style-type: none"><li>- Complaint of misconduct against RMac.</li><li>- RMac gave the investigating lawyer privileged documents on the condition that they are only seen by one person.</li><li>- Given for a limited time, for an express purpose, on specific conditions.</li></ul>	<ul style="list-style-type: none"><li>- LPP is a fundamental principle of justice.</li><li>- Grant for a limited time and express purpose does not waive all privilege generally.</li><li>- There is no inroad made into privilege.</li></ul>
<i>Nicholson v Icepak</i> [1999] (HC)	<ul style="list-style-type: none"><li>- Mr Chatwin represents State Insurance and Icepak.</li><li>- Icepak damaged produce, breached their insurance policy.</li><li>- Icepak told Chatwin confidential information, Chatwin told State.</li></ul>	<ul style="list-style-type: none"><li>- The conversation between Chatwin and Icepak was inadmissible because Chatwin was breaching privilege.</li><li>- Chatwin should have stepped away from the litigation as soon as he was aware of the insurance policy breach.</li><li>- Should have only addressed Icepak's counsel.</li><li>- No inroads in LPP, no balancing test.</li></ul>

### Duties to Third Parties

- Addressed in rule 12.

<p><i>Gartside v Sheffield, Young, and Ellis</i> [1983] (CA)</p>	<ul style="list-style-type: none"><li>- Herrold (testatrix) fell in a retirement home and injured herself.</li><li>- Called her solicitors to make a new will.</li><li>- Died 7 days later, new will was not executed prior to her death.</li></ul>	<ul style="list-style-type: none"><li>- A solicitor who accepts instructions to prepare a will for a client owes a reasonable duty of care to the beneficiary under the proposed will.</li><li>- Solicitor must carry out instructions with due diligence and present the will for execution.</li><li>- The lawyer owes a duty to the intended beneficiary, as breach of their duty is what caused the loss.</li><li>- The public would expect the lawyer to be held accountable.</li><li>- Loss needs to be reasonably foreseeable.</li><li>- Needs to be a situation where the beneficiary would not have recourse short of suing the lawyer.</li><li>- Gartside could recover.</li></ul>
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## Litigation Immunity

<p><i>Arthur J S Hall v Simons</i> [2000] (HL)</p>	<ul style="list-style-type: none"> <li>- Three clients brought separate claims of negligence.</li> <li>- Solicitors argued the case should be struck out on the basis of litigation immunity.</li> </ul>	<ul style="list-style-type: none"> <li>- Immunity was not required to deal with collateral attacks on civil and criminal decisions.</li> <li>- Fundamental principles of a lawyer's duty to the Court would protect lawyers from frivolous lawsuits. If the lawyer upholds their duty, they will not be found liable.</li> <li>- Other professions do not enjoy immunity from being sued in negligence.</li> <li>- Good for public faith in the system.</li> <li>- House of Lords abolished immunity for both criminal and civil jurisdictions.</li> </ul>
<p><i>Lai v Chamberlains</i> [2007] (SC)</p>	<ul style="list-style-type: none"> <li>- Chamberlains (firm) advised the Lais to personally guarantee any judgement amount against their company.</li> <li>- They did so. Lost the case and Court ordered \$700k against them.</li> </ul>	<ul style="list-style-type: none"> <li>- CA held insufficient justification to retain civil litigation immunity, left criminal for another day.</li> <li><u>Majority (Elias CJ)</u></li> <li>- Supreme Court held immunity is not necessary for the administration of justice.</li> <li>- It does not exist in other professions, no reason for it to continue to exist here.</li> <li>- It is not required to meet the public interest in finality of proceedings or the integrity of the judicial process.</li> <li>- There are no compelling public policy reasons for maintaining immunity.</li> <li>- Abolished it in all jurisdictions.</li> <li><u>Minority (Tipping J)</u></li> <li>- A better approach in civil proceedings would have been to maintain immunity and have a small number of exceptions to it.</li> <li>- Should be absolute immunity in criminal proceedings. Convictions should be upheld unless overturned on appeal.</li> </ul>
<p><i>Rondel v Worsley</i> Reasons for Immunity</p>	<p>See page 31.</p>	
<p>Australia</p>	<ul style="list-style-type: none"> <li>- Upheld immunity based on the <i>Rondel</i> policy grounds.</li> <li>- There are other avenues to seek redress, such as through the law society.</li> </ul>	

### Duties to Former Clients

Rule 8.

<p><i>Black v Taylor</i> [1993] (CA)</p>	<ul style="list-style-type: none"> <li>- Gazley had acted for multiple members of a family for some time.</li> <li>- Sought to act for one family member against the plaintiff (another family member).</li> </ul>	<ul style="list-style-type: none"> <li>- Test: Does the administration of justice warrant refusing to allow a lawyer to continue to act? Would the fair-minded member of the public see there being conflict in the lawyer continuing to act?</li> <li>- Justice must be seen to be done.</li> <li>- Here Gazley knew of the personality, weaknesses, personalities, style, and background of the plaintiff.</li> <li>- The cab-rank rule only applies in connection to a number of other rules.</li> <li>- Cooke J: Focus on confidentiality; Gazley knew too much about the plaintiff.</li> <li>- Richardson and McKay JJ; Focus must be on justice being seen to be done by the plaintiff. Justice must be seen to be done.</li> </ul>
<p><i>Bolkiah v KPMG</i> [1999] (HL)</p>	<ul style="list-style-type: none"> <li>- Prince Bolkiah of Brunei had a number of business ventures.</li> <li>- KPMG acted as his business and personal accountants.</li> <li>- Brunei government seek to retain KPMG in investigating Bolkiah's businesses.</li> </ul>	<ul style="list-style-type: none"> <li>- The onus lay on KPMG to demonstrate that there was a negligible risk the confidential information would not pass to the new client.</li> <li>- For an accountant, the duty is to show there is 'no risk' that the information will pass.</li> <li>- 260 people at KPMG worked in the office which was involved in the work for the Prince.</li> <li>- The information barrier was not sufficient to show no risk of the information passing, therefore KPMG cannot act.</li> </ul>
<p><i>Hana v Stephens</i> [2007] (HC)</p>	<ul style="list-style-type: none"> <li>- Ms Kato and Mr Stephens were in a relationship and set up Hana (flower company) together.</li> <li>- Hana's lawyer acted for Mr Stephens in a previous matter over breach of a restraint of trade agreement.</li> </ul>	<ul style="list-style-type: none"> <li>- Applied <i>Black v Taylor</i>.</li> <li>- It's not important that the lawyer had no recollection of Mr Stephens, what was important was that the objective reasonable person in Mr Stephens' shoes would perceive a conflict of interest/breach of duty.</li> <li>- Justice must be seen to be done.</li> <li>- Stephens could reasonably perceive that the lawyer knew about his personality, fears, and weaknesses, thus they were precluded from acting.</li> </ul>

## Undertakings

- Solicitors undertakings are promises to do or not do something in legal practice
- Undertakings must be clear, precise, and capable of being performed.
- They must be understood by all parties to mean the same thing.
- They are enforceable. If they cannot be performed compensation can be considered.
- You can apply to the court to be released from an undertaking.
- They are used to obtain some action or forbearance from the party to whom the undertaking is given.
- They can be given to essentially anyone including the Court, clients, other practitioners or third parties.
- As the lawyer is an officer of the Court, the court has the power to enforce performance of the undertaking if necessary.
- A solicitor cannot plead that to honour an undertaking would breach a duty owed to a client.
- Typically undertakings come from partners as they hold the indemnity insurance.
- Undertakings can be given to get people closer to the resolution.
  - Commonly used with transferring money into a trust account in conveyancing.

<i>ASC3 v W</i> [2011] (HC)	<ul style="list-style-type: none"> <li>- Dispute between clients.</li> <li>- W undertook to take money into his trust account and hold it 'pending satisfactory resolution of this matter'.</li> <li>- Mediation failed, W consulted senior lawyers at his firm, released the money.</li> </ul>	<ul style="list-style-type: none"> <li>- A mere error of judgement or negligence simpliciter does not constitute professional misconduct.</li> <li>- Test: Look at the conduct and consider whether it falls below the conduct to be expected of the legal profession and whether the public would think less of the profession if the particular conduct was viewed as acceptable.</li> <li>- This undertaking was not precisely drafted. W was negligent in its drafting.</li> <li>- It was provided gratuitously, the recipient didn't rely on it, W genuinely believed it was finite, he sought advice from other lawyers whether he should release the funds or not.</li> <li>- He acted reasonably.</li> <li>- W committed an honest mistake under difficult and pressing circumstances.</li> <li>- Objectively, his error was negligence and incompetence such that it brings the profession into disrepute.</li> </ul>
<i>CIR v Bhanabhai</i> [2007] (CA)	<ul style="list-style-type: none"> <li>- B is a lawyer at Dyer Whitechurch.</li> <li>- Acted for two clients.</li> <li>- Director of one of them.</li> <li>- Wrote an undertaking to the IRD promising to pay outstanding GST. Intended to write it from the company, but wrote 'we'.</li> </ul>	<ul style="list-style-type: none"> <li>- Undertaking was personal from Mr B, not from the company.</li> <li>- Normally undertakings are not personal, but taking the circumstances and Mr B's position into account, it is appropriate to see it as personal.</li> <li>- An undertaking is not conditional on it being possible to fulfil unless specified.</li> <li>- CIR relied on the undertaking.</li> </ul>
<i>Solicitor General v Miss Alice</i> [2007] (HC)	<ul style="list-style-type: none"> <li>- Berrymans requested NZ Army to build a bridge, agree to maintain it.</li> <li>- Coronial inquest found the collapse of the bridge was due to Berryman's failure to maintain it.</li> </ul>	<ul style="list-style-type: none"> <li>- Miss Alice is in contempt of Court.</li> <li>- Army's actions opened them to sanctions, but Miss Alice did not want to put his clients through the cost and stress.</li> <li>- Breached his undertakings.</li> </ul>

	<ul style="list-style-type: none"><li>- Later Army report shows Army bears blame for the collapse.</li><li>- Report provided on limited terms.</li><li>- Miss Alice gives an undertaking to receive the documents on the same conditions.</li><li>- Releases report to the media.</li></ul>	<ul style="list-style-type: none"><li>- Nearly serious enough to be struck off.</li><li>- Was acting in what he believed to be the best interests of his client.</li><li>- Suspended for 3 months and fined \$5,000.</li></ul>
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### Tikanga Maori and Legal Ethics

See page 40.

<p><i>National Standards Committee v Poananga</i> [2012] (NZLCDT)</p>	<ul style="list-style-type: none"><li>- Ms Poananga working in Gisborne for chambers based in Auckland.</li><li>- Dealt with 350 claims with strict deadlines virtually alone.</li><li>- Misrepresented instructions, forged signatures, was party to misleading statutory declarations.</li><li>- Attempted to skew psychometric tests.</li></ul>	<ul style="list-style-type: none"><li>- Skewing the tests is further evidence of her dishonesty.</li><li>- She should have admitted responsibility and plead mitigating factors at sentencing.</li><li>- Cultural factors which could have been mitigating factors:<ol style="list-style-type: none"><li>1. Requirement under tikanga to meet kanohi ki te kanohi.</li><li>2. Attend hui on Marae.</li><li>3. Go to clients, rather than have them come to you.</li></ol></li><li>- Impossible for Ms P to meet these requirements due to her extreme workload and time pressures.</li><li>- Clients have no power to legitimise breach of the rules.</li><li>- Cultural factors were not seen as a mitigating factor.</li><li>- Due to complete lack of honesty she was struck off.</li><li>- It was open to the Court to see cultural factors as mitigating and thus reduce the severity of the penalty (suspension rather than striking off).</li></ul>
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